

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 1:17-00195

WINDEL LESTER

JAMES EDWARD LESTER

GREG A. LESTER

GEORGETTA KENNEY

MEMORANDUM OPINION AND ORDER

Before the court is Georgetta Kenney's Motion to Continue ECF No. 193. Counsel for Kenney requests additional time to review the voluminous jail calls and emails of incarcerated co-defendants produced by the United States in its Fourth Supplemental Response. Id. The United States opposed the motion arguing that none of the jail calls and emails concerned Kenney. ECF No. 194. At the April 18, 2018 pre-trial motions hearing, counsel for Kenney stated that the government's representation does not negate his responsibility to review the jail calls for potentially exculpatory evidence. Additionally, counsel for co-defendants, Windel Lester, James Lester, and Greg Lester, did not object to the proposed continuance.

Despite the United States' objection, the court believes that failure to grant the requested continuance would likely prejudice defense counsel's ability to effectively represent Kenney. Because failure to grant the requested continuance

would likely result in a miscarriage of justice, the court finds that the ends of justice outweigh the best interest of the defendants and the public in a speedy trial under 18 U.S.C. § 3161(h)(7)(A). In deciding to grant defendant's motion, the court considered the factors outlined in 18 U.S.C. § 3161(h)(7)(B) and finds that denying the motion "would deny counsel for the defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." 18 U.S.C. § 3161(h)(7)(B)(iv).

Deeming it proper to do so, the court **GRANTS** defendant's motion to continue.

Accordingly, the court **ORDERS** as follows:

- I. Trial of this action is continued until **Tuesday, August 14, 2018, at 9:30 a.m.**, in Charleston;
- II. Pretrial motions are to be filed on or before **Thursday, July 5, 2018**;
- III. A pretrial motions hearing is scheduled for **Thursday, July 12, 2018, at 10:30 a.m.**, in Bluefield;
- IV. Proposed voir dire questions, proposed jury instructions, and prospective witness lists are to be filed on or before **Tuesday, August 7, 2018**; and
- V. Pursuant to 18 U.S.C. § 3161(h)(7)(A), the time from the filing of defendant's motion until the trial is excludable for purposes of the Speedy Trial Act.¹

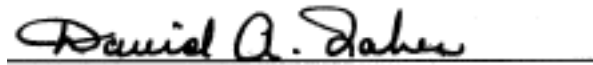
¹ The court notes that, for purposes of determining compliance with the Speedy Trial Act, "in cases involving multiple defendants only one speedy trial clock, beginning on the date of the commencement of the speedy trial clock of the most recently added defendant, need be calculated under 18 U.S.C. § 3161(h)(7)." United States v. Piteo, 726 F.2d 50, 52 (2d Cir.

Given the generous nature of the extension granted herein, no further extensions of the deadline will be granted.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to counsel of record, the United States Marshal for the Southern District of West Virginia, and the Probation Office of this court.

IT IS SO ORDERED this 26th day of April, 2018.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge

1983); see also United States v. Walker, Nos. 95-5914, 96-4247, 96-4110, 1997 WL 358770, *3 (4th Cir. June 30, 1997) (quoting Piteo).